

The Director of Central Intelligence

Washington, D.C. 20505

OGC 81-10927

22 December 1981

The Honorable William French Smith
Attorney General of the United States
Department of Justice
Washington, D.C. 20530

Dear Bill:

Thank you for your letter advising me that your staff stands ready to work with mine to assure that legislation to revise the Criminal Code properly takes into account the nation's need for an effective Intelligence Community. We have an excellent opportunity with this legislation to strengthen the Criminal Code to protect our national security interests.

None of the pending legislation to revise the Criminal Code contains a definitive statement on the relationship between the Code and the conduct of intelligence activities. The absence of such a statement, combined with the expanded extraterritorial federal criminal jurisdiction the legislation provides, creates uncertainties which could seriously impair our intelligence efforts. In addition, the legislation leaves an intelligence officer engaged in legitimate intelligence activities with only prosecutorial discretion and the common law defense of exercise of public authority to shield him from criminal liability.

To clear up uncertainty in the relationship between legitimate intelligence activities and federal criminal statutes, and to provide our intelligence officers with proper protection from criminal liability, I suggest that we seek to incorporate in Criminal Code reform legislation a provision along the lines of the following:


"Nothing in title 18, United States Code, or any other federal criminal statute shall be construed to create criminal liability for the conduct of intelligence activities by a federal public servant that are authorized and conducted in accordance with the Constitution and applicable federal statutes, Executive Orders, presidential directives, and departmental or agency regulations, which regulate the conduct of intelligence activities."

This provision would protect intelligence officers whose activities are both authorized and conducted in accordance with the Constitution and the detailed body of federal statutes, Executive Orders, and implementing procedures regulating the conduct of intelligence activities. The provision would not itself authorize any intelligence activity, nor would it shield an intelligence officer engaged in an improper intelligence activity.

In addition to clarifying the relationship between federal criminal law and the conduct of intelligence activities, the Criminal Code legislation presents an opportunity to deter dangerous activities which impair our nation's ability to protect itself from external threats. We should work to modify the legislation to include stronger provisions to protect the United States from espionage and unauthorized disclosures of intelligence information. My staff is now studying this issue and I will be forwarding my suggestions in this area to you separately. Stronger provisions are also needed to protect against unauthorized disclosure of diplomatic codes and communications, and new provisions are needed to protect intelligence personnel from violent attacks. Also, the Criminal Code legislation will require modification to include the provisions of the Intelligence Identities Protection Act when that Act achieves final passage.

Please have the appropriate people on your staff contact Stanley Sporkin, my General Counsel, who will handle this matter for me. I will soon be forwarding for Office of Management and Budget clearance letters to Senate Select Committee on Intelligence Chairman Goldwater and Senate Judiciary Committee Chairman Thurmond expressing my concerns with the Senate version of Criminal Code reform legislation. I appreciate very much the cooperation of your Department in assuring that the Criminal Code legislation meets our needs.

Sincerely,


William J. Casey

TAB E